

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

**JOWELL C. BULLARD, NORRIS §  
RAY TOLLERSON, JR., RANDY §  
STOKES, JR., DONNA DAVIS, §  
ROBERT F. DEXTER, JR., §  
JOSHUA R. LUSTER, SCOTT RUSK, §  
JEFFORY E. POOL, TYE A. WARD, §  
JAMES DAVID SMITH, MICHAEL A. §  
KING, DOMINGO MARQUEZ, §  
STEPHEN A. WILSON, H. WAYNE §  
BLACK, CHARLES DOUGLAS WALKER, §  
GARY D. PHENIX, SCOTT BEECHER §  
HERRING, PAM J. HITT, SAMUEL RAY §  
GIBSON, JOHNNIE R. WHITAKER, §  
EUFEMIO JOE RUBALCABA, §  
CHRISTOPHER L. SCHWARZ, §  
STACY L. GRANT, §  
HERBERT CHARLES CARR, §  
CHRIS JENKINS, TODD FINLEY, §  
KEVIN WAYNE OSBORNE, §  
M.L. WITHERSPOON, §  
ALVIN VIRGIL NEWTON, §  
RODERICK J. UPTON, KEVIN LANKFORD, §  
on their own behalf and for §  
all others similarly situated, §**

**Plaintiffs,**

**v.**

**BABCOCK & WILCOX TECHNICAL §  
SERVICES PANTEX, L.L.C. §**

**Defendant. §**

**CIVIL ACTION NO. 2-07CV-049-J**

**TRIAL BRIEF: THE COMBINATION EXEMPTION**

Under the Fair Labor Standards Act ("FLSA"), an employer is not required to compensate employees for overtime at a rate of time and one-half if those employees are exempt. 29 U.S.C. § 213(a)(3). In order to establish that Plaintiffs are exempt from the overtime

provisions of the FLSA, Defendant must demonstrate that (1) the Plaintiffs were paid at least \$455 per week, (2) the way the Plaintiffs are compensated meets the salary basis test, and (3) the Plaintiffs meet the job duties test for the executive exemption (29 C.F.R. §541.100), the administrative exemption (29 C.F.R. § 541.200), some combination of those duties (under 29 C.F.R. § 541.708), or the highly compensated employees exemption (29 C.F.R. § 541.601). This trial brief focuses on the combination exemption.

Under the combination exemption, “[e]mployees who perform a combination of exempt duties as set forth in the regulations in this part for executive [and] administrative...employees may qualify for exemption.” 29 C.F.R. § 541.708. For example, “an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption.” *Id.* “In other words, work that is exempt under one section of this part will not defeat the exemption under any other section.” *Id.*

Accordingly, “the combination exemption provides a mechanism for cobbling together different exempt duties for purposes of meeting the primary-duty test.” *IntraComm, Inc. v. Bajaj*, 492 F.3d 285, 293 (4th Cir. 2007) (citing 29 C.F.R. § 541.708). The combination exemption regulation “focuses solely on the employee’s job duties.” *Id.* As a result, the combination exemption does not relieve the employer of its obligation to meet the salary requirements of the administrative and executive exemptions. *See id.*

Respectfully submitted,  
Bradley W. Howard  
State Bar No. 00786452  
Robert C. Vartabedian  
State Bar No. 24053534  
BROWN & FORTUNATO, P.C.  
905 South Fillmore, Suite 400 (79101)  
P.O. Box 9418  
Amarillo, TX 79105-9418  
(806) 345-6300 Telephone  
(806) 345-6363 Facsimile  
bhoward@bf-law.com Email  
rvartabedian@bf-law.com Email

By:           /s/ Bradley W. Howard            
Bradley W. Howard

**ATTORNEYS FOR DEFENDANT**

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document and that a true and correct copy was served on the parties listed below through the electronic case filing system if the Notice of Electronic Filing indicated that the parties received it or otherwise by mailing a copy by Certified Mail, Return Receipt Requested, to the parties this \_\_\_\_ day of June, 2008.

Michael A. Warner  
The Warner Law Firm  
101 S.E. 11<sup>th</sup>, Suite 301  
Amarillo, TX 79101

Jason C. Webster  
Matthews & Associates  
2905 Sackett  
Houston, TX 77098

          /s/ Bradley W. Howard            
Bradley W. Howard